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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 790

JAMES C. COLGATE, APPELLANT,

vs.

ERWIN M. HARVEY, TAX COMMISSIONER OF THE STATE OF VERMONT

APPEAL FROM THE SUPREME COURT OF THE STATE OF VERMONT

FILED MARCH 18, 1935.

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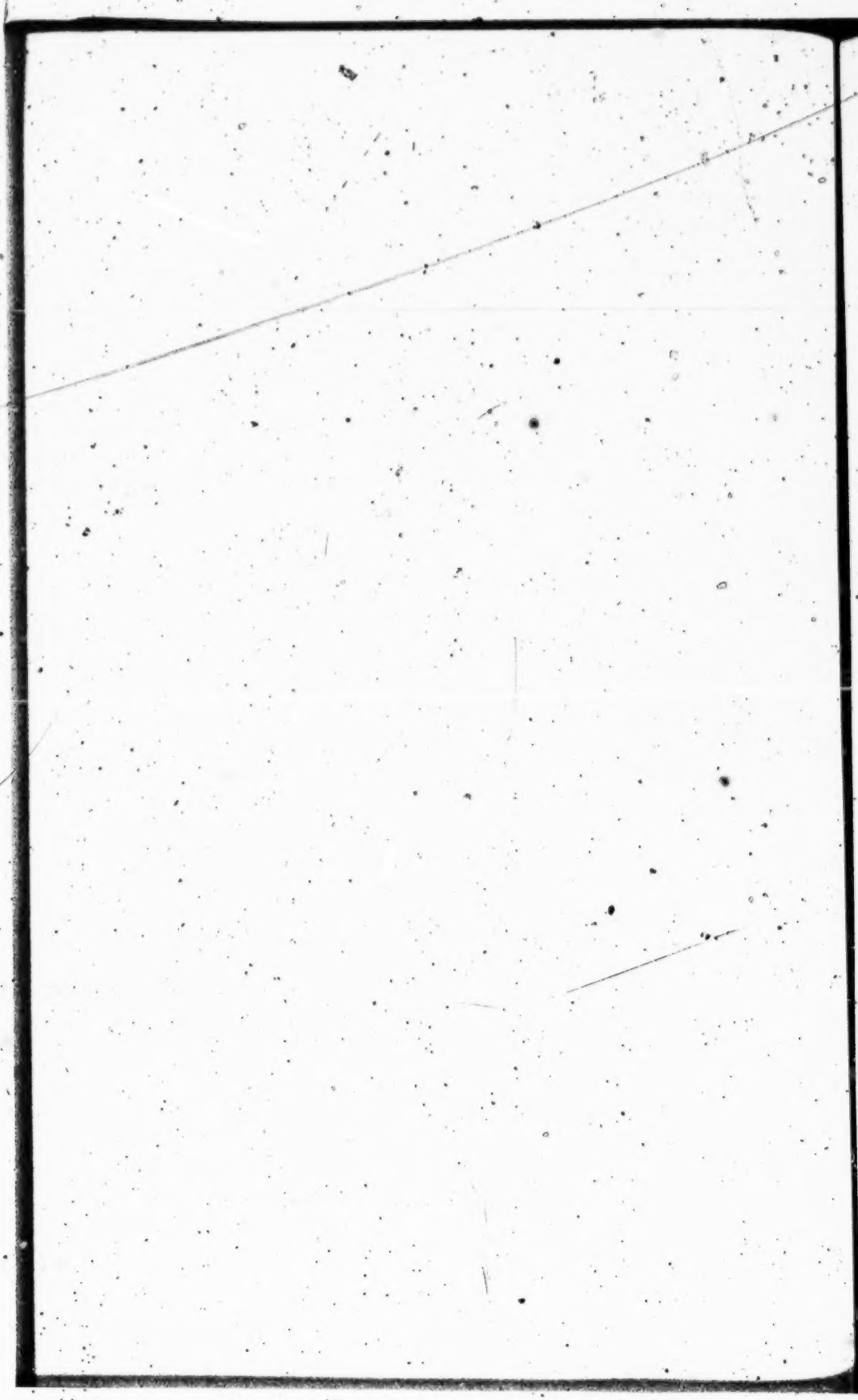

[fols. a-2 & 3]

IN SUPREME COURT OF VERMONT

DOCKET ENTRIES

WASHINGTON COUNTY

1618

JAMES C. COLGATE

v.

ERWIN M. HARVEY, Com'r

T&H A. G., Page, Seymour Edgerton

Mar. T. 1933. Pet. fi. Mar. 2, 1933; agreed state. of facts fi. June 2; heard in vacation after the Mar. T. '33; with Ct., judgt. ord. fi. Feb. 15, '34; plt'fs except'ns to judgt. fi. Feb. 15; plt'fs bill of excep. fi. Feb. 15. Heard (in Sup. Ct.) June 5 (1934), Powers, C. J. Nov. T. 34. Judgt. affd. Nov. 7, Pet. for allowance of appeal fi., Ord. allow. appeal fi., Assign. Errors fi., State. under rule 12 of rules of Sup. Ct. U. S. fi., Notice of appeal and notice under rule 12 fi., Citation and Officer's return of service fi., Costs Bond fi. Feb. 5, 1935; Praecipe fi. Feb. 20, 1935.

[fol. 4] IN COUNTY COURT OF WASHINGTON COUNTY

In Vacation

JAMES C. COLGATE

vs.

ERWIN M. HARVEY, Tax Commissioner

PLAINTIFF'S BILL OF EXCEPTIONS

February 15, 1934.

Petition brought to the County Court within and for the county of Washington, under and pursuant to the pro-

visions of section 27, of Part I, of the Income and Franchise Tax Act of 1931; heard by said Court, Bicknell, J., presiding, on agreed statement of facts and arguments of counsel, in vacation after March Term 1933, and with the Court; judgment, February 15, 1934, that the defendant recover his costs; exceptions by plaintiff.

At the trial the plaintiff presented, and there arose, certain questions of law, each and every of which the Court determined and ruled against the plaintiff. Said questions of law are, and are presented by, each and every of the claims made by the plaintiff in paragraphs 5A; 5B; 7A(1); 7A(2); 7B(1); 7B(2); 9A; 9B and 11 of his application to the defendant, dated August 27, 1932, marked Exhibit C, and attached to and forming a part of his said petition, which is hereby referred to and made a part of this bill of exceptions to show said questions of law; and also certain other questions of law, to wit: (1) that the tax on said dividends of corporations not doing business in Vermont, as to business done outside Vermont, was tantamount to a tax on the securities of said corporations, which said securities were not taxable in Vermont because having their business situs outside Vermont and thus coming under the principle governing the taxation of said securities as tangible per- [fols. 5 & 6] sonalty having its situs outside Vermont; (2) that by so penalizing or discouraging the investment in corporate business carried on outside Vermont, the tax operates as an unlawful interference with interstate commerce through placing a virtual embargo on the exportation of Vermont capital, an important factor of interstate commerce, contrary to section 8 of Article I of the United States Constitution. To said determinations and rulings as to said questions of law, and each of them, the plaintiff was allowed exceptions respectively.

The plaintiff filed his exceptions to said judgment, and each and every of said exceptions was overruled by said Court, to which respectively the plaintiff was allowed exceptions.

Said petition, including all papers therein referred to, attached thereto and therein made a part thereof, said agreed statement of facts, and said exceptions to judgment are hereby referred to and made a part of this bill of exceptions for a review and final decision of said questions of law by the Supreme Court.

Exceptions allowed, subject to amendment within thirty days from the date hereof, execution stayed, and cause and said questions of law passed to the Supreme Court.

Bicknell, J. having deceased, this bill of exceptions is allowed by me pursuant to the provisions of section 2071 of the Public Laws.

Given under my hand this 15th day of February, 1934.

(Signed) John S. Buttles, Superior Judge.

[fol. 7] In County Court of Washington County

[Title omitted]

Petition.

To the County Court, within and for the County of Washington and State of Vermont, next to be held at Montpelier, within and for the said County of Washington on the second Tuesday of March, A. D. 1933, comes your petitioner, James C. Colgate, of Bennington, in the County of Bennington and State of Vermont, by George L. Hunt, his attorney, and brings this petition under and in accordance with the provisions of section 27 of Part I of No. 17 of the Acts of 1931, known as the Income and Franchise Tax Act of 1931, and thereupon complains and says:

1. On March 10, 1932, your petitioner made his return under said Act for the calendar year 1931 to the petitionee as Tax Commissioner for the State of Vermont, copy of which said return is hereto attached and made a part hereof and marked "Exhibit A" and accompanied his said return by his protest in writing against the requirement of such return and the imposition and collection of such tax, a copy of which said protest is hereto attached and made a part hereof and marked "Exhibit B".

2. Thereafterwards, on August 27, 1932, under and in accordance with the provisions of section 26 of said Act, your petitioner applied to the petitionee as such Tax Commissioner for a revision of the tax assessed against him, in accordance with said return, a copy of which said applica-
[fol. 8] tion is hereto attached and made a part hereof and marked "Exhibit C".

3. Thereafterwards, by leave of said petitionee as such Tax Commissioner, your petitioner, as such applicant, amended his said application as appears by such amendment, a copy of which said amendment is hereto attached and made a part hereof and marked "Exhibit D".

4. Thereafterwards, on February 28, 1933, after hearing on said application as amended, the petitionee, as such Tax Commissioner, made his order thereon, a copy of which said order is hereto attached and made a part hereof and marked "Exhibit E".

5. Your petitioner, to avoid prolixity and repetition, instead of averring herein the allegations of said application as amended, in the words and figures as therein set forth, hereby alleges and avers each and every of the facts and points of law set forth in said application as amended, and for this special purpose hereby refers to said application and said amendment thereto and makes the same a part hereof with all and the same force and effect as though repeated herein.

Wherefore, your petitioner prays that, upon appropriate proceedings being had, your petitioner may be granted the relief, if any, to which he may be found entitled, and that any taxes, interest or penalties paid, and found by your Honorable Court to be illegally assessed, shall be ordered refunded to your Petitioner with interest at six percent per annum from the time of payment, with costs, and that judgment may be entered herein accordingly, all pursuant to the statute in such case made and provided.

[fol. 9] Dated this 1st day of March, 1933.

James C. Colgate, by George L. Hunt, His Attorney.

George L. Hunt recognized to the petitionee, in the sum of fifty dollars, as surety for costs of prosecution, as the law directs.

Before me,

Joseph G. Frattini, County Clerk.

[fol. 10] SUMMONS

STATE OF VERMONT,
Washington County, *ss:*

To any Sheriff or Constable in the State, Greeting:

By authority of the State of Vermont, you are hereby commanded to summon Erwin M. Harvey, of Montpelier, in the County of Washington and State of Vermont, Tax Commissioner, to appear before the County Court next to be held at Montpelier, within and for the county of Washington, on the second Tuesday of March, A. D. 1933, then and there to make answer to the foregoing petition of James C. Colgate, and show cause, if any he have, why the prayer thereof should not be granted.

Fail not, but serve and return according to law.

Dated at Montpelier, in the County of Washington, this 1st day of March, A. D. 1933.

Joseph G. Frattini, County Clerk.

(Here follows photolithograph, side folio 11.)

Exhibit A to Petition

Form No. 109

One quarter of total tax must accompany return. Balance in three equal installments due in three, six and nine months after the return is due. The whole tax may be paid in one payment which may be sent with return.

Auditor's Stamp

STATE OF VERMONT
INDIVIDUAL INCOME TAX RETURN
For Calendar Year 1931

or Fiscal Year ending ..... 193....

File this return with Commissioner of Taxes, Montpelier, Vt., not later than March 15th or 15th of Third Month after end of Income Year.

Do Not Write in this Space
Date Received

File Code
Serial Number
Cashier's Stamp

The Commissioner will not notify you of due date for installments if you elect to so pay your tax. Failure to receive a due installment on or before its due date will automatically result in application of the penalty provided by statute.

PRINT NAME AND ADDRESS PLAINLY BELOW

JAMES C. COLGATE
NAME

Street and number or rural delivery

Bennington — Post Office; Bennington — County; Vermont — State

Occupation Stockbroker

Cash Ck. M. O.
First Payment

Amount

1. Are you a resident of the State of Vermont? Yes
2. Is this a joint return of husband and wife? No
3. State name of husband or wife if a separate return was made HOPE H. COLGATE
4. Were you married and living with husband or wife on the last day of your taxable year? Yes
5. If not were you on the last day of your taxable year supporting in your household one or more persons closely related to you? --
6. If your status in respect to questions 4 and 5 changed during the year, state date and nature of change --
7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? --

Item and Instruction No.	CLASS A—BUSINESS INCOME From whom received	Amount Received	Expenses Paid (Explain in Schedule E)	
1.	Salaries, Wages, Fees, Commissions, etc.			
	International Minerals & Metal Corp.	11,985.00		11,985. 00
	Various Directors Fees	3,270.00		3,270. 00
2.	Income from Business and Professions (Schedule A)			
3.	Business Income from Partnerships (State name and address)			
	Jas. B. Colgate & Co. 44 Wall St., New York, N. Y.	Loss		(21,150. 39
4.	Business Income from Fiduciaries (State name and address)			
5.	Rents and Royalties (Schedule B)			9,082. 22
6.	Other Income (State Nature of Income)			
7.	Total Income in Items 1 to 6			3,186. 83
	DEDUCTIONS FROM CLASS A			
8.	Interest Paid (Not included in Schedule A)		65,055. 62	
9.	Taxes Paid on Business Property (Not included in Schedules A and B) (Schedule C)			
10.	Losses by Fire or Storm on Business Property (Not included in Schedules A and B.) (Schedule D)			
11.	Bad Debts incurred in Business (Not compensated for by Insurance) (Schedule E)			
12.	Contributions (Schedule E)			
13.	Other Deductions Expenses (Schedule E)		5,022. 16	
14.	Total Deductions in Items 8 to 13			70,077. 78
15.	Net Income Class A (Item 7 minus Item 14)	Loss		(66,890. 95)
	CLASS B—INTANGIBLE INCOME			
16.	Interest on Notes, Mortgages, Bonds, etc. (Schedule G)			47,872. 77
17.	Taxable Dividends of Vermont Corporations (Schedule H)			
18.	Taxable Dividends of Other Corporations (Schedule I)			131,530. 39
19.	Intangible Income from Fiduciaries and Partnerships (State name and address)			
20.	Taxable Income from Annuities (Schedule J)			
21.	Total Class B Income in Items 16 to 20 (No Deductions)			179,403. 16
	COMPUTATION OF TAX			
22.	Net Income Class A (Item 15)			Loss
23.	Personal Exemption and Credit for Dependents			
24.	Taxable Income Class A (Item 22 minus Item 23)			
25.	Income Class B (Item 21)			179,403. 16
26.	Personal Exemption (Not allowed if in receipt of ANY Class A income)			
27.	Taxable Income Class B (Item 25 minus Item 26)			179,403. 16
28.	Class A Tax (2% of Item 24)			
29.	Class B Tax (4% of Item 27)			7,176. 13
30.	Total Tax (Items 28 and 29)	See annexed protest		7,176. 13

RETURNS CANNOT BE ACCEPTED AS COMPLETE UNLESS EVERY ITEM IS ANSWERED WITH FIGURES OR WITH THE WORD "NONE"

AFFIDAVIT

I swear (or affirm) that this return has been examined by me, and, to the best of my knowledge and belief, is a true and complete return for the taxable year as stated, pursuant to No. 17 of the Acts of 1931 and Regulations issued under authority thereof.

If return is made by agent, the reason therefore must be stated on this line

Subscribed and sworn to before me this 10th day of March, 1932.

Jas. C. Colgate
Signature of taxpayer or agent

Address of agent

Morris Cohen — Signature of officer administering oath

Notary Public — Title

11

V9

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION

1. Total receipts from business or profession (state kind of business) _____ $ _____

Cost of Goods Sold

2. Labor	$	
3. Material and supplies		
4. Merchandise bought for sale		
5. Other costs (Itemized below or on separate sheet)		
6. Plus inventory at beginning of year		
7. Total (Lines 2 to 6)	$	
8. Less inventory at end of year		
9. Net Cost of Goods Sold (Line 7 minus line 8)	$	

Enter "C," or "C or M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Other Business Deductions

10. Salaries not included as "Labor," in line 2 (Do not deduct compensation for your services)	$	
11. Interest on business indebtedness to others		
12. Taxes on business and business property		
13. Losses (Explain in Schedule D)		
14. Bad debts arising from sales or services		
15. Depreciation, obsolescence, and depletion (Explain in table provided at foot of page)		
16. Rent, repairs, and other expenses (Itemized below or on separate sheet)		
17. Total (Lines 10 to 16)	$	
18. Total Deductions (Line 9 plus line 17)		$
19. Net Profit (Line 1 minus line 18) (Enter as Item 2 on Page 1)		$

Explanation of deductions claimed on Lines 5 and 16 _____

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of Jan. 1, 1931	5. Depreciation (Schedule K)	6. Repairs	7. Other Expenses (Itemize)	8. Net Profit
41-43 John St. N.Y.C.	$ 20,000.04		$	$ 250	$	$ 8963.89	$ 10,786.15
Colby Homestead, New London, N.H.	1,814.80					3518.73	(1,703.93
	21,814.84			250		12,482.62	9,082.22

Explanation of deduction claimed in column 7 Interest on mtgs., taxes, agents, commissions Insurance; etc.

SCHEDULE C—TAXES ON BUSINESS PROPERTY

	$

SCHEDULE D— Losses by Fire or Storm on Business Property not compensated for by Insurance

	$

SCHEDULE E—EXPLANATION OF DEDUCTIONS IN ITEMS 1-11-12-13

	$
Item 13-Business expenses	
Salaries	3,000.00
Legal fees	2,022.16
Total	5,022.16

SCHEDULE F—NON-TAXABLE INCOME

	$		$
Interest on Federal Obligations		Interest on Money loaned in Vt. at 5% or less	
Interest on Vt. State and Municipal Bonds		Interest on Deposits in Vt. Banks	
Dividends from Vt. Corporations			

SCHEDULE G—INTEREST on NOTES, MORTGAGES, BONDS, Etc.

All from sources outside Vermont	47,872.77

SCHEDULE H—TAXABLE DIVIDENDS VT. CORPORATIONS

	$

SCHEDULE I—DIVIDENDS of CORPORATIONS out of VERMONT

First Natl Bank, Bennington, Vt.	$ 160.00
County " " " "	495.00
Socony-Vacuum Oil Co.	14,500.00
Other corps. not doing business in Vermont	116,375.39
	131,530.39

SCHEDULE J—TAXABLE INCOME FROM ANNUITIES

	$

SCHEDULE K—EXPLANATION OF DEDUCTION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost (Exclusive of Land)	6. Value as of Jan. 1, 1931 (Exclusive of Land)	Amount of Depreciation Charged Off 7. Previous Years	8. This Year
Brick Bldg.-John St. New York City	1904-23	old	--	$ 8,353.33	$ --	$ 250.00 per year	$ 250.00

Attach a separate sheet if any of the above schedules do not provide sufficient space

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[fol. 12] EXHIBIT "B" TO PETITION

James C. Colgate, renders herewith the annexed Individual Income Tax Return for the Calendar Year 1931, upon the form prescribed by the State of Vermont, and pays ¼ of the tax indicated thereby, for the purpose, and only for the purpose, of avoiding the penalties provided for the failure to do so, and protests against the requirement of such return and the imposition and collection of such tax upon the grounds, among others,

that the Vermont Income and Franchise Tax Acts of 1931 is unconstitutional and void in whole and in part under Article I, Sec. 8, Article IV, Sec. 2 and Amendment XIV of the Constitution of the United States and Article 9th of the Constitution of the State of Vermont, since it would, if enforced, inerfere with interstate and foreign commerce, deprive persons of the privileges and immunities of the citizens of the several states, deprive them of their property without due process of law and deprive them of the equal protection of the laws, and that said Vermont Income and Franchise Tax Act is misconstrued by the form of return prescribed by the State of Vermont, and that the tax indicated by said Return is therefore incorrect in the following particulars, among others:

No tax at all is due since Part I of said Act is wholly void. Class B income should be reduced by (a) $65,055.62, the interest paid in the course of earning Class B. income, (b) $7,819.55, a bad debt actually ascertained and charged off during the year, (c) $50,823.63, contributions made to charities during the year (or so much thereof as does not exceed 15% of the Class B income computed without the [fol. 13] benefit of such deduction), (d) $131,530.39, dividends on corporations other than Vermont corporations, (e) $47,872.77 interest earned on account of money loaned without the State of Vermont, and (f) $800 exemption for a married individual living with his wife.

Nothing herein contained shall be deemed to preclude the undersigned from urging other grounds of objection to said Act or any part thereof or from urging a different treatment of the above or othe items in the computation of the tax, if any.

Dated: March 10, 1932.

Jas. C. Colgate.

[fol. 14] EXHIBIT "C" TO PETITION

Before the Commissioner of State Taxes.

JAMES C. COLGATE

vs.

STATE OF VERMONT

Application

To the Commissioner of State Taxes of the State of Vermont:

Comes James C. Colgate, of Bennington, in the County of Bennington and State of Vermont, and respectfully represents:

1. That the said James C. Colgate was born at Yonkers, New York, in the United States of America and is a citizen of the United States and of the State of Vermont. That the said James C. Colgate, as a taxpayer within the provisions of No. 17 of the Acts of 1931, known as the Income and Franchise Tax Act of 1931, heretofore, to wit, on the 10th day of March, 1932, made his return thereunder for the calendar year 1931 to said Commissioner, accompanied by his protest in writing against the requirement of such return and the imposition and collection of such tax; and said return and protest, on file with said Commissioner, are hereby referred to and made a part hereof.

2. That thereafterwards there was assessed against said taxpayer in accordance with said return, a tax in the sum of $7,176.13 of which he has paid the sum of $3,588.07 being the first two quarters of the total tax so assessed.

3. That said tax was a Class B tax, so-called, being four percent. of $179,403.16, which said sum was made up of $131,530.39 as taxable dividends of corporations, and $47,872.77 as interest on notes, mortgages, bonds, etc.

4. That of said sum of dividends of corporations $131,530.39 only $655.00 was dividends of Vermont corpora-
[fol. 15] tions, the remainder of $130,875.39 being dividends of corporations doing business outside of the State of Vermont and as to such business.

5. Said tax was unlawfully assessed and collected and is void, for that:

A. Said taxpayer's natural, inherent and unalienable rights of acquiring, possessing and protecting property, guaranteed to him by Article 1st of the Declaration of Rights of the Vermont Constitution, and the declaration that government is, or ought to be, instituted not for the particular emolument or advantage of any who are a part only of the community, by Article 7th of said Declaration of Rights, have been abridged, infringed and violated by the provisions of said Act, in that said law, as respects the taxation and exemption of income by dividends on stocks of corporation, by the operation of the exemption of Section 3, Second, (d) penalizes and discriminates against him for owning, and deriving such income from stocks of corporations, whether domestic or foreign, that are "doing business" outside of the State of Vermont, such penalty and discrimination being measured by the extent of the business of the corporation done without the State of Vermont.

B. Said taxpayer's privileges and immunities as a citizen of the United States and a citizen of the State of Vermont have been abridged, and he has been deprived of his property without due process of law, and he has been denied the equal protection of the laws, in violation of the provisions of the Constitution of the United States, by said Act, which classifies his income from stocks of corporations so as to impose a greater burden upon his acquisition, possession and enjoyment of stocks of corporations which do all or part of their business outside the State of Vermont, than is imposed upon his acquisition, possession and [fol. 16] enjoyment of stocks of corporations which do all or a larger part of their business in the State of Vermont.

6. That of said sum of $47,872.77 as such interest, the whole amount was interest on money loaned outside the State of Vermont, but $25,945.00 was interest on such loans bearing interest at a rate not exceeding five per cent per annum.

7. Such tax was unlawfully assessed and collected and is void, for that:

A. Said Taxpayer's natural, inherent and unalienable rights of acquiring, possessing and protecting property,

guaranteed to him by Article 1st of the Declaration of Rights of the Vermont Constitution, and the declaration that government is, or ought to be, instituted not for the particular emolument or advantage of any who are a part only of the community, by Article 7th of said Declaration of Rights, have been abridged, infringed and violated by the provisions of said Act, in that said Law, as respects the taxation and exemption of income by interest on account of money loaned, by the operation of Section 3, Second, (a):

(1) Imposes a tax upon interest received on money loaned outside the State of Vermont at not exceeding five percent per annum evidenced by a promissory note, mortgage on real estate or bond for a deed, including credit representing the purchase price or any part thereof of real estate within the State of Vermont, sold or transferred, evidenced by a promissory note, mortgage on real estate or bond for a deed, bearing interest at said rate, and imposes no tax in case of such a loan of money at the same rate of interest within the State of Vermont.

(2) Imposes such a tax on interest on money not so [fol. 17] loaned either within or without the State of Vermont when the rate of interest exceeds five per cent per annum.

B. Said taxpayer's privileges and immunities as a citizen of the United States and a citizen of the State of Vermont have been abridged, and he has been deprived of his property without due process of law, and he has been denied the equal protection of the laws, in violation of the provisions of the Constitution of the United States, by said Act, which:

(1) Imposes a tax upon interest received on money loaned outside the State of Vermont at not exceeding five per cent per annum evidenced by a promissory note, mortgage on real estate or bond for a deed, including credit representing the purchase price or any part thereof of real estate within the State of Vermont, sold or transferred, evidenced by a promissory note, mortgage on real estate or bond for a deed, bearing interest at said rate, and imposes no tax in case of such a loan of money at the same rate of interest within the State of Vermont.

(2) Imposes such a tax on interest on money not so loaned either within or without the State of Vermont when the rate of interest exceeds five percent per annum.

8. That said tax was computed without the benefit of a personal exemption of $800.00 to which said taxpayer would have been entitled as a married individual living with his wife but for the fact that he received during said year an amount of Class A. income, so-called.

9. Such tax was unlawfully assessed and collected and is void, for that:

A. Said taxpayer's natural, inherent and unalienable [fol. 18] rights of acquiring, possessing and protecting property, guaranteed to him by Article 1st of the Declaration of Rights of the Vermont Constitution, and the declaration that government is, or ought to be, instituted not for the particular emolument or advantage of any who are a part only of the community by Article 7th of said Declaration of Rights, have been abridged, infringed and violated by the provisions of said Act, in that said law, as respects the taxation and exemption of Class B. income so-called, allows an exemption of $800.00 in the case of a married individual living with his wife only where the taxpayer has no Class A. income, so-called, by the operation of the exemption of Section 3, Second (e).

B. Said taxpayer's privileges and immunities as a citizen of the United States and a citizen of the State of Vermont have been abridged, and he has been deprived of his property without due process of law, and he has been denied the equal protection of the laws, in violation of the provisions of the Constitution of the United States, by said Act, which as respects the taxation and exemption of Class B. income, so-called, allows an exemption of $800.00 in the case of a married individual living with his wife only where the taxpayer has no Class A. income, so-called.

10. That said taxpayer during said year received Class A. income, so-called, in the sum of $3,186.83 which was more than offset by deductions thereform, so-called, in the amount of $70,077.78, all of which was interest or expenses paid by said taxpayer which said interest and expenses were so paid in the course of, and as a means of, earning

the Class B income, so-called, and that said taxpayer dur-
[fol. 19] ing said year had other items properly deductible but which were not reported on the face of the return since the reporting thereof would have been either uncalled for or ineffective under the terms of the official form, to wit, (a) $2,000.00 of Class A. income, so-called, as a personal exemption to which said taxpayer was entitled as a married individual living with his wife, (b) $800.00 of Class B. income, so-called, as a personal exemption to which said taxpayer was entitled as a married individual living with his wife, (c) $7,819.55 as a debt actually ascertained to be worthless and charged off during said year; and (d) a part of $50,823.63 as contributions within said year to organizations operated exclusively for religious, charitable or educational purposes.

11. That if, notwithstanding the contentions in paragraphs 5, 6, 7, 8 and 9 above set forth, any tax was due from said taxpayer, there should be applied against Class A. income, so-called, an exemption of $2,000.00 as aforesaid, and a portion of said sum of $50,823.63 contributions limited to 15% of said Class A income as computed without the benefit of the application of any part of such contributions, and there should be applied against Class B income, so-called, an exemption of $800.00 as aforesaid, and a portion of said sum of $50,823.63 contributions limited to 15% of said Class B income as computed without the benefit of the application of any part of such contributions, and there should be applied against Class A income or Class B income or both, said $7,819.55 worthless debt, and said $70,077.78 interest and expenses, which two said sums the taxpayer elects to have applied against said Class B. income, so-called.

Wherefore, the said taxpayer hereby applies to said Commissioner for revision of the tax so assessed against
[fol. 20] him, pursuant to the statute in such case made and provided.

Dated this 27th day of August, 1932.

Jas. C. Colgate. George L. Hunt, Attorney for Applicant. E. J. Dimock, Of Counsel.

[fol. 21] EXHIBIT "D" TO PETITION

Before the Commissioner of State Taxes

JAMES C. COLGATE

vs.

STATE OF VERMONT

Amendment of Application

Now comes James C. Colgate, applicant in the above matter, by George L. Hunt, his attorney, and amends said application by adding to Paragraph 4 thereof the following:

except that as to $14,500 of said dividends, received by said taxpayer from the Socony-Vacuum Oil Company, as shown by said return, said taxpayer is informed and believes that .23 of 1% of the income of said Socony-Vacuum Oil Company for the year 1931 was derived from business done within the State of Vermont.

James C. Colgate, by George L. Hunt, His Attorney.

[fols.22 & 23] EXHIBIT "E" TO PETITION

Tax Department, Income Tax Division

In re JAMES C. COLGATE

Order on Revision of Assessment

The above named taxpayer having made application for revision of his income tax for the year 1931, under the provisions of Sec. 26 of Part 1 of No. 17 of the Acts of 1931 on hearing thereon the taxpayer appearing by his attorneys, Theriault & Hunt, it is determined by the Commissioner that the tax assessed to wit, the sum of $7,176.13, as shown by the return filed, is not excessive and is correct and such tax is resettled and computed at said sum of $7,176.13.

Done at Montpelier in the county of Washington and State of Vermont, this 28th day of February, A. D., 1933.

Erwin M. Harvey, Commissioner of Taxes.

A true copy.—Attest.

Erwin M. Harvey, Commissioner.

[fols. 24 & 25] In County Court of Washington County

[Title omitted]

Agreed Statement of Facts

In the above-entitled cause it is hereby agreed by and between the parties, by their respective counsel, that the facts in said cause are as follows, to wit:

1. The facts set forth in the petition, including the facts set forth in paragraphs 1, 2, 3, 4, (as amended by the amendment thereto attached to and made a part of said petition and marked Exhibit D) 6, 8, and 10 of the petitioner's application to the Commissioner of State Taxes, dated August 27, 1932, attached to and made a part of said petition and marked Exhibit C.

2. The petitioner has hitherto paid the full amount of the tax of $7,176.13, mentioned in paragraph 2 of said application, under protest.

Dated this 31st day of May, 1933.

James C. Colgate, by George L. Hunt, His Attorney.
Erwin M. Harvey, Tax Commissioner, by Lawrence C. Jones, Attorney General.

]fols. 26 & 27[In County Court of Washington County

In Vacation

[Title omitted]

Judgment Order

February 15, 1934

Judgment, on agreed statement of facts, referred to on file, that the defendant recover his costs.

Given under our hands this 15th day of February, 1934.

(Signed) Lewis D. Coburn, Geo. M. Stewart, Judges of Washington County Court.

[fol. 28] IN COUNTY COURT OF WASHINGTON COUNTY

In Vacation

[Title omitted]

PLAINTIFF'S EXCEPTIONS TO JUDGMENT

February 15, 1934

Now comes the plaintiff in the above-entitled cause, by Theriault & Hunt, his attorneys, and excepts to the judgment rendered therein, that the defendant recover his costs, on the following grounds:

1. That the facts as agreed to in the agreed statement of facts, referred to on file, do not support said judgment.

2. That said judgment, based on said facts, is erroneous and invalid, in that it involves in its rendition a determination and ruling against the plaintiff of certain questions of law presented and arising at the trial, to wit, questions of law shown by each and every of the claims made by the plaintiff in paragraphs 5A, 5B, 7A(1), 7A(2), 7B(1), 7B(2), 9A, 9B and 11 of his application to the defendant, dated August 27, 1932, marked "Exhibit C" and attached to and forming a part of his petition, which said petition, on file, including all papers therein referred to, attached thereto and therein made a part thereof, is hereby referred to; and also certain other questions of law, to wit: (1) that the tax on said dividends of corporations not doing business in Vermont, as to business done outside Vermont, was tantamount to a tax on the securities of said corporations, which said securities were not taxable in Vermont because having their business situs outside Vermont and thus coming under the principle governing the taxation of said securities as tangible personalty having its situs outside Vermont; (2) that by so penalizing or discouraging the [fols. 29 & 30] investment in corporate business carried on outside Vermont, the tax operates as an unlawful interference with interstate commerce through placing a virtual embargo on the exportation of Vermont capital, an important factor of interstate commerce, contrary to section 8 of Article I of the United States Constitution; and each

and every of such determinations and rulings was erroneous for the reasons stated in said claims and herein, respectively.

James C. Colgate, by, Theriault & Hunt, His Attorneys.

[fols. 31 & 32] In Supreme Court of Vermont, Washington County, May Term, 1934

Colgate

v.

Harvey

Judgment—Filed Nov. 7, 1934

In the above entitled cause, the Clerk will enter: Judgment Affirmed.

George M. Powers, for the Court.

We agree: Leighton P. Slack, Sherman R. Moulton, Frank D. Thompson, John C. Sherburne.

We dissent:——.

[File endorsement omitted.]

[fol. 33] In Supreme Court of Vermont, Washington County, May Term, 1934

James C. Colgate

v.

Erwin M. Harvey

All present.

Opinion

Powers, C. J.

The petitioner, a resident and tax-payer of Bennington, Vermont, brings this proceeding under sec. 27, Part I, of No. 17, Acts of 1931, known as the Income and Franchise

Tax Law, seeking relief from the rulings of the tax commissioner fixing the amount of his income tax for the year 1931. The real basis of the petition is the alleged unconstitutionality of the act referred to. The case was heard by county court within and for the county of Washington, Bicknell, J., presiding and judgment was rendered for the defendant. The case is here on a bill of exceptions signed by Buttles, J., under the authority of P. L. 2071.

The grounds upon which the constitutionality of the act is challenged may be stated as follows:

1. That it contravenes section 2 of Article IV of the Federal Constitution which provides that the citizens of each state shall be entitled to all the privileges and immunities of the citizens in the several states.

2. That it infringes the Fourteenth Amendment to that Constitution, which provides that no state shall deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws.

3. That it violates Article I and VII of our Bill of Rights, which, speaking broadly, provide for the equality of individuals before the law.

4. That it results in an unwarranted interference with interstate commerce.

[fol. 34] 5. That it attempts to tax the income from dividends on stock in foreign corporations which is tantamount to a tax on the stock itself which has a taxable situs beyond the jurisdiction of this state.

In their practical application, these several provisions have much in common; and as applied to the case in hand, simply mean that the act and the taxes raised thereunder, must be, in a legal sense, uniform and equal. This requirement affects both persons and things; but is met when the law in question imposes no greater burden on one person or species of property than on another similarly situated or of like character.

So far as supposable cases in which a tax law bears more or less unfairly upon an individual tax-payer are concerned, it is quite enough to say, as we did say in Clark v. Burlington, 101 Vt. 391, 410, on the strength of Dane v.

Jackson, U. S. 65 L. ed. 1107, that a tax law is not in conflict with the Fourteenth Amendment unless it "proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received as to amount to the arbitrary taking of property without compensation—'to spoilation under the guise of exerting the power of taxing.'" This is so, because a system of taxation has not yet been devised that bears with exact equality and justice upon each and every tax payer or class of taxpayers, and it lies not in the power of the court or any other authority except the legislature to correct such inequalities unless they contravene federal authority or are of the serious quality above indicated.

So in the matter of exemptions and deductions, the legislature is vested with the widest latitude of discretion, and it is only in very exceptional cases that the courts can interfere. Thus, express constitutional restrictions aside, it may exempt an income not exceeding a certain amount. In re Opinion of the Justices, N. H. 138 Atl. 284, 289; it may [fol. 35] make different exemptions as to earned income and income from intangibles. In re Opinion of the Justices, N. H. 149 Atl. 321, 327; McPherson v. Fisher, Ore. 23 Pac. (2d) 913; In re Opinion of the Justices, Mass. 170 N. E. 800, 803. It may allow reasonable deductions of business expenditures from business income. In re Opinion of the Justices N. H. 154 Atl. 632, 633; State v. Tax Commission, Wis. 201 N. W. 764, 766. It may provide for a graduated progressive rate. Bacon v. Ransom, Mo. 56 S. W. (2d) 786. It may allow a reasonable personal exemption and a reasonable deduction for dependents. In re Opinion of the Justices, N. H. 149 Atl. 321, 327; In re Opinion of the Justices, Mass. 170 N. E. 800, 803. It may exempt money loaned on local real estate at a rate of interest not exceeding five per cent. In re Opinion of the Justices, N. H. 138 Atl. 284, 291. N. H. 85 Atl. 757, 758.

That any scheme of taxation must stand this test of uniformity and equality is too well established to be now disputed. It is not here disputed.

That this requirement does not forbid classification of persons or property for purposes of taxation, is equally well established, and is not here questioned.

So the vital question is one of classification. That the power of the legislature in these matters is very broad is

everywhere admitted; and that it is limited only by the requirements, (1) that the classification must be based upon a rational ground,—some difference that bears a just relation to the purpose to be served—and (2) that the members of the several classes shall be treated alike is the unquestioned law of this state. State v. Hoyt, 71 Vt. 59; Hardwick v. Wolcott, 98 Vt. 348; State v. Caplan, 100 Vt. 140; Clark [fol. 36] v. Burlington, 101 Vt. 391; Hartland v. Damon's Est., 103 Vt. 519, 525; Montpelier v. Gates, 106 Vt. 116, 124. That this is the rule of the United States Supreme Court appears from a long line of cases extending from Bell's Cap R. Co. v. Pennsylvania, U. S. 33 L. ed. 892 to Lawrence v. Tax Commission, U. S. 76 L. ed. 1102,—most of which are cited in our cases, above.

The Income and Franchise Tax Law, divides taxable income into two classes; A. Business income,—so denominated in the return called for by the act,—which includes salaries, wages, rents, fees, etc., from the aggregate of which the tax-payer may deduct certain items of interest paid, contributions, bad debts incurred, etc. B. Intangible income including interest,—except interest on money loaned in this state at a rate of interest not exceeding five per cent, * * * dividends on stock in domestic and foreign corporations,—not including stock of corporations subject to a franchise tax under Part II of the act,—etc., subject to certain exemptions not here important, and subject also to a certain personal exemption and a specified dependency exemption, if the income is derived wholly from such intangibles.

The petitioner was not taxable on account of Class A income, as his allowable deductions exceeded the amount received. But by the act, he was taxable for a large sum on account of Class B income, which came very largely from dividends on foreign corporations doing little or no business in this state. His claim here is that he is prejudiced by a discriminatory tax on such stock and that the law is unconstitutional in that it attempts to tax income earned outside the state of Vermont, and because the exemption of five per cent loans applies only to loans in this state. [fol. 37] It may be granted at the outset that a classification for taxing purposes based solely upon residence would be unlawful. A state cannot discriminate against a non-resident, simply because he is a non-resident. Sprague v.

Fletcher, 69 Vt. 69, 75; State v. Caplan, 100 Vt. 140, 154; Howe Machine Co. v. Gage, U. S. 25 L. ed. 754. But this proposition by no means impinges upon the power of a state to make reasonable classifications for taxing purposes.—It simply condemns one basis of classification. It points out a single limitation of the power of classification. It only illustrates the inability of a state, under the guise and form of classification to enforce a tax law which in its practical application abridges the equality of privilege secured to the citizenry of the whole country by the Federal Constitution, unless that classification is based upon reasonable grounds according to the rule hereinbefore referred to. Then, too, as has been pointed out in some of the cases, the principle of this limitation must not be pressed too far. As Mr. Justice Holmes says in Noble State Bank v. Haskell, et al., U. S. 55 L. ed. 112, 116; "Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties in the Bill of Rights."

It is not necesesary that the basis of the classification should be deducible from the nature of the things classified. It is enough if the classification is reasonably founded in "the purposes and policy of taxation." Clark v. Burlington, 101 Vt. 391, 406; Watson v. Comptroller, U. S. 65 L. ed. 170, 175; Stebbin v. Riley, U. S. 69 L. ed. 884, 889. Not only this, but in the Clark case we expressly approved the proposition that the basis of tax classification is not open to objection unless it precludes the assumption that the classification was made in the exercise of legislative judgment [fol. 38] and discretion, as laid down in Campbell v. California, U. S. 50 L. ed. 382, 388, and in Stebbin v. Riley, U. S. 69 L. ed. 884, 889.

It has long been the law of the federal court that the Fourteenth Amendment was not intended to prevent a state from adjustment of its system of taxation to its necessities in all proper and reasonable ways. It does not compel a state to adopt an iron rule of equal taxation. It does not compel a resort to close distinctions or the maintenance of precise scientific uniformity. "Possible differences, not shown to be substantial or which are based upon discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibition." Lawrence v. Tax Commission, U. S. 76 L. ed. 1102, 1108. The amendment does

not preclude the exercise of a wide legislative discretion in passing tax laws which, though involving reasonable discriminations and material qualifications, are deemed necessary for the encouragement of needful and useful industries, and the development of its material and economic interests. Bell's Cap R. Co. v. Pennsylvania, U. S. 33 L. ed. 892, 895; Pacific Express Co. v. Seibert, U. S. 35 L. ed. 1035, 1039; Barbier v. Connolly, U. S. 23 L. ed. 923, 925. Exemptions, diversity of taxation, both as to the amount imposed and the species of property selected, are not inconsistent with uniformity and equality in a legal sense of those terms.

It follows, therefore, that it is not every difference in treatment of a foreign corporation that is discriminatory in the sense that makes it unconstitutional. Any such difference that reasonably results from circumstances and conditions inhering in the difference of residence and is proportional thereto will be upheld.

[fol. 39] Bacon v. State Tax Commission, Mich. 60 L. R. A. 321 involved the constitutionality of a tax law that required an inhabitant of Michigan to pay a tax on all his shares in foreign corporations except national banks,—while his shares in domestic corporations were only taxable when the property of such corporation was untaxed. It was pointed out that the person holding stock in a domestic corporation when property was taxed was not taxed on such stock, while he was taxed on his stock in a foreign corporation, whether its property was taxed or not, and it was claimed that if a law exempted the stock of a domestic corporation under certain conditions it must exempt that of a foreign corporation under the same conditions; and that for lack of this, the law in question resulted in lack of uniformity and equality, and was unconstitutional. It was held otherwise. The court in effect said that while the state of Michigan had no jurisdiction to tax the property of a corporation located outside of its boundaries, it might lawfully tax the stock of such corporations held by its citizens in the way provided by the statute. Among others, the court cites the case of Insurance Co. v. New Orlean, 1 Woods 89, which has been frequently approved by the courts. That was a suit to recover a $1000 tax on a foreign insurance company. It was defended on the ground that the same statute imposed a tax of but $500 on

a domestic insurance company. And it was claimed that the law violated the equality and uniformity clause of the state constitution. The claim was not sustained.

So in Kidd v. Alabama, U. S. 47 L. Ed. 669, 670, it was held that a tax on stock of a railroad incorporated in another state held by a resident of Alabama was valid though no such tax was imposed upon the stock of domestic railroads or those doing business in the state.

See, also, Pembina Cons. Silver M. & M. Co. v. Penn-
[fol. 40] sylvania, U. S. 31 L. ed. 650.

The right of this state to tax the petitioner's stock in the foreign corporations or the income thereof under the mobilia doctrine is assured. Though the federal Supreme Court, in its zeal to avoid the evils of multiple taxation, has laid waste many of its own decisions regarding the taxable locus of tangible personal property, and almost countless state decisions on that subject, it has not yet denied such right. In First National Bank v. Maine, U. S. 77 L. ed. 1401, 1408, Mr. Justice Sutherland, speaking for the Court, calls attention to the changing conditions which influenced the disregard of the ancient maxim mobilia sequuntur personam as applied to perosnal property having a fixed and determined situs, says: "But in respect of intangible property, the rule is still convenient and useful, if not always necessary; and it has been adhered to as peculiarly applicable to that class of property." It is to be observed, however, that the learned Justice was careful to note that shares of stock and other intangibles might be so used in the foreign state as to acquire an actual situs there analogous to that of tangible personal property under the recent holdings of the court. There is nothing in the case in hand, however, to indicate any such foreign situs.

It was held in Kirtland v. Hotchkiss, U. S. 25 L. ed. 558, 562, that a state may lawfully tax a debt due from a non-resident, and that such a law does not violate any of the constitutional provisions here relied upon by the petitioner.

And finally, Lawrence v. Tax Commission, U. S. 76 L. ed. 1102, affirms the new rule as to situs of tangible personalty, shows the inapplicability of that rule to the taxation of intangibles, and holds that a state statute taxing

a resident on income earned in another state is valid and enforceable.

With these principles in mind the difficulties presented by the record largely disappear. Under them, the first, sec- [fol. 41] ond and third grounds above stated are unavailing.

There is no merit in the claim that this tax unlawfully interferes with interstate commerce. It is not a tax against the corporation or upon its property. It is a tax against the individual and upon his property. It imposes no restrictions upon the transportation into this state of the products of the foreign corporation or upon their sale here. It does not take effect until the interstate transportation, if any, has been completed, the goods sold, money collected, a dividend declared and paid. The activities of the corporation are not, in the slightest degree, embarrassed or affected. Pembina Co. Silver M. & M. Co. v. Pennsylvania, U. S. 31 L. ed. 650, 652; Hiesler v. Thomas Colliery Co., Pa. 24 A. L. R. 1215, 1223; Shaffer v. Carter, U. S. 64 L. ed. 445, 449; Kirtland v. Hotchkiss, U. S. 25 L. ed. 558, 562; Hall v. Geiger-Jones Co., U. S. 61 L. ed. 480, 492, and cases cited.

Nor is there any merit in the claim that the petitioner is unduly prejudiced by the exemption of dividends of corporations subject to a franchise tax or in the method of arriving at the basis of the franchise tax. It is to be noted that throughout the act, foreign and domestic corporations are treated alike. The exemptions provided for in Part I apply to both. The franchise tax of Part II applies to both. The basis of that tax is the same—the amount of business done in this state. If all that business is done in this state, the entire net income is subject to the franchise tax. If only part of the business is done here, the net income of that part is, alone, subject thereto. And that part of the dividends earned outside the state is, alone, subject to the income tax. All of these provisions apply as well to domestic as foreign corporations. The purpose of these provisions is obvious. The legislature, in the exercise of a wise discretion, thus avoided a double tax on a single economic interest. It obviated the imposition of an [fol. 42] income tax and a franchise tax on things so intimately related as to be entitled to the special consideration of the legislature in framing its taxing scheme.

Income taxes may result in double taxation, and frequently do, and yet they are valid. A non-resident may be taxed on the franchise of doing business in this state, and the income from that business may also be taxed here. Shaffer v. Carter, U. S. 64 L. ed. 445, 458. The state has as much taxing authority over a resident. But there is no constitutional requirement that income taxes shall be levied without regard to multiple taxation, and the legislature is not precluded from avoiding such a result if it can do so without transgressing the limits of valid classification as herein defined. Such a deduction as is now under discussion is in essence a means of equalizing the burden of taxation rather than an exemption. State v. Frear, Wis. Ann. Cas. 1913A, 1147, 1156. The provision is free from constitutional objections and is well within the principles laid down in Kidd v. Alabama, U. S. 47 L. ed. 669, 672 and Darnell v. Indiana, U. S. 57 L. ed. 267, 272.

In determining the basis of such taxes, even in the case of a non-resident taxpayer, the amount of business done outside the state may be used as a measure. Maxwell v. Bugbee, U. S. 63 L. ed. 1124, 1131.

There is no constitutional infirmity in the exemption of five per cent Vermont loans. Opinions of Justices of New Hampshire, supra. The state argues that this is but an extension of a settled state policy. But we prefer to put our decision on the broad ground that a state may, in the interests of thrift and state development, make such reasonable exemptions as this. That it may so encourage its taxpayers to keep Vermont money invested here for the assistance of the agricultural and industrial interests of the state.

[fol. 3] The petitioner claims that he was entitled to a deduction of $800 as a married man living with his wife; or if not entitled, the act arbitrarily and unreasonably discriminates against him and others in like circumstances and is in this respect unconstitutional. The language of the act is as follows: "In case the income taxed in this section is derived wholly from ownership of or interest in any stock, bond, note or other interest bearing security, there shall be deducted from such income" a personal exemption of eight hundred dollars in the case of a married person living with husband or wife. But if either a hus-

band or wife, it is provided, shall receive any income other than that above specified, the exemption shall not be allowed. All the income taxed to the petitioner was on intangibles, but he received certain items of business income during the year. So he was not, under the statute entitled to the exemption. With the practical fairness or the wisdom of these provisions we have nothing to do. We are only concerned with the constitutional power of the legislature to enact them. The petitioner is treated by the law just as every other tax-payer, simiarly situated, is treated. The legislature has a wide latitude of discretion in these matters, and may make reasonable classifications of income from different sources. Shields v. Williams, Tenn. 19 S. W. (2d) 261; and as we have seen, may provide different exemptions for different classes. McPherson v. Fisher, Ore. 23 Pac. (2d) 913. The claim is not sustained.

The petitioner also claims that he is entitled to a deduction from his net income the $2000 personal exemption provided for in section 11 of the act. An examination of the act discloses that it uses the term "net income" only with reference to Class A, or business income. Part I, sec. 3. It defines net income in section 5 as meaning the gross income less the deductions allowed by the act. Section 6 defines gross income as including the items which are [fols. 44 & 45] included in Class A. If there is nothing left after the gross income has been reduced by these deductions, there is nothing from which the $2000 exemption can be taken, for it is expressly provided in Section 11 that it shall be deducted from the net income. This is the petitioner's situation. And for the reasons above specified, this result does not establish the unconstitutionality of the act. This claim, too, is rejected.

We have considered all the questions raised by the record and find nothing in the statute that conflicts with the State or Federal Constitution. We reach this conclusion without resort to the well established rule that one who challenges the constitutionality of an act of the legislature carries the burden of showing it—not only by a preponderance of evidence, but beyond a reasonable doubt. In such cases, the court deals not with probabilities, but with moral certainties.

Judgment affirmed.

[fol. 46] IN SUPREME COURT OF VERMONT

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL

To the Honorable George M. Powers, Chief Justice of the Supreme Court of the State of Vermont:

Your petitioner, James C. Colgate, the appellant in the above entitled action, respectfully alleges:

1. At a General Term of the Supreme Court of the State of Vermont, begun and held at Montpelier, on the first Tuesday of November, A. D. 1934, final judgment was made and entered in an action then and there pending, entitled James C. Colgate v. Erwin M. Harvey, Commissioner of Taxes, affirming a judgment of the Washington County Court, Washington County, Vermont, entered on the 15th day of February 1934, in favor of the said Erwin M. Harvey, Tax Commissioner, and against said James C. Colgate, your Petitioner, on an agreed statement of facts and that said Erwin M. Harvey recover his costs. Such costs have been taxed in the sum of $30.80.

2. That said Supreme Court of the State of Vermont was then and there, and still is, the highest Court of said State in which a decision in said suit could be had.

3. There was drawn in question in the said suit the validity of a statute of the said State of Vermont, to wit, the Vermont Income and Franchise Tax Act of 1931, being [fols. 47 & 48] Act No. 17 of the Public Acts of 1931 of the State of Vermont, on the ground that said statute was repugnant to the Constitution of the United States and the decision in said suit was in favor of the validity of said statute.

Wherefore, your Petitioner, considering himself aggrieved by the said final decision of the said Supreme Court of the State of Vermont, hereby appeals to the Supreme Court of the United States and prays that said appeal be allowed and a citation issued directed to Erwin M. Harvey, Tax Commissioner of the State of Vermont, the appellee herein, commanding him to appear before said Supreme Court of the United States sitting at Washing-

ton, District of Columbia, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceeding in this cause, duly authenticated, may be transmitted to the said Supreme Court of the United States to the end that the errors complained of by your Petitioner may be examined and corrected and the said judgment reversed, and that your Petitioner may be granted the relief to which he may be found to be entitled and that any taxes, interest or penalties paid, and found to be illegally assessed, shall be ordered refunded to your Petitioner with interest at six percent. per annum from the time of payment, with costs, and that judgment may be entered herein accordingly; and your Petitioner, desiring to supersede execution on the judgment rendered against him as aforesaid, here tenders bond in such sum as the Court may require for such purpose and prays that with the allowance of the appeal, a supersedeas may be issued.

Dated: Bennington, Vermont, January 31st, 1935.

(Signed) Jas. C. Colgate, Petitioner. George L. Hunt, E. J. Dimock, Attorneys for Petitioner.

[fol. 49] IN SUPREME COURT OF VERMONT

[Title omitted]

ORDER ALLOWING APPEAL

The above named James C. Colgate having prayed for the allowance of an appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Vermont, made and entered at a General Term of said Court, begun and held at Montpelier on the first Tuesday of November, A. D. 1934, affirming a judgment of the Washington County Court, Washington County, Vermont, entered on the 15th day of February, 1934, in a suit entitled, "James C. Colgate v. Erwin M. Harvey, Tax Commissioner", in favor of said Erwin M. Harvey and against the said James C. Colgate on an agreed statement of facts and that said Erwin M. Harvey recover his costs,

And said James C. Colgate having presented his petition for appeal, assignment of errors, prayer for reversal,

and statement under Rule 12 of the Rules of the Supreme Court of the United States,

And it appearing therefrom, and from the record in said suit, that said proposed appeal is from a final judgment of the highest Court of this State in which a decision in said suit can be had and that there was drawn in question the validity of Act No. 17 of the Public Acts of 1931 of [fols. 50 & 51] the State of Vermont on the ground of its being repugnant to the Constitution of the United States, and that the decision in said suit was in favor of the validity of said statute, now, therefore, it is hereby

Ordered, that an appeal be, and the same hereby is, allowed from the said final judgment of this Court to the Supreme Court of the United States and the bond on appeal, conditioned as required by law, is hereby fixed in the sum of $250.00 which bond shall operate as a cost and supersedeas bond and shall stay and suspend all further proceedings upon said judgment until the determination of said appeal.

Further ordered, that the Clerk of the Supreme Court of the State of Vermont, within thirty days from the date hereof, make, authenticate and transmit to the Clerk of the Supreme Court of the United States as a transcript of the record herein containing fully and truly all material parts of the record herein which shall be designated by praecipe filed with him by either of the parties hereto.

Dated: Montpelier, Vermont, February 4, 1935.

George M. Powers, Chief Justice of the Supreme Court of the State of Vermont.

[fol. 52] IN SUPREME COURT OF VERMONT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the appellant, James C. Colgate, by E. J. Dimock and George L. Hunt, his attorneys, and respectfully submits, presents and files its assignments of error complained of and says:

That in the records and proceedings of the Honorable Supreme Court of the State of Vermont in the above en-

titled cause and in the determination of the issues raised therein there is manifest error to the injury and prejudice of the said appellant and for such error the appellant assigns the following:

1a. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $130,875.39 received by the appellant in the year 1931 as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts not subject to taxation as against such corporations at the rate of 2% under Part II of said Public Act No. 17 because earned without the State of Vermont, but imposed no tax upon the amounts received as dividends or parts thereof on stocks [fol. 53] of corporations the income of which was in whole or in such parts subject to taxation as against such corporations at the rate of 2% under Part II of said Act because earned within the State of Vermont,

Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

1b. That said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $130,875.39 received by the appellant in the year 1931 as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts not subject to taxation as against such corporations at the rate of 2% under Part II of said Public Act No. 17 because earned without the State of Vermont, but imposed no tax upon the amounts received as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts subject to taxation as against such corporations at the rate of 2% under Part II of said Act because earned within the State of Vermont,

Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in

violation of Article IV, Section 2, of the Constitution of the United States.

1c. The said Court erred in ruling that

[fol. 54] The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $130,875.39 received by the appellant in the year 1931 as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts not subject to taxation as against such corporations at the rate of 2% under Part II of said Public Act No. 17 because earned without the State of Vermont, but imposed no tax upon the amounts received as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts subject to taxation as against such corporations at the rate of 2% under Part II of said Act because earned within the State of Vermont,

Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

1d. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $130,875.39 received by the appellant in the year 1931 as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts not subject to taxation as against such corporations at the rate of 2% under Part II of said Public Act No. 17 because earned without the State of Vermont, but imposed no tax upon the amount received as dividends or parts thereof on stocks [fol. 55] of corporations the income of which was in whole or in such parts subject to taxation as against such corporations at the rate of 2% under Part II of said Act because earned within the State of Vermont,

Did not deny said appellant the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

1e. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931.

Which imposed a tax at the rate of 4% on income amounting to $130,875.39 received by the appellant in the year 1931 as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts not subject to taxation as against such corporations at the rate of 2% under Part II of said Public Act No. 17 because earned without the State of Vermont, but imposed no tax upon the amounts received as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts subject to taxation as against such corporations at the rate of 2% under Part II of said Act because earned within the State of Vermont,

Did not interfere with interstate or foreign commerce in violation of Section 8 of Article I of the Constitution of the United States.

2a The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

[fol. 56] Which imposed a tax at the rate of 4% on income amounting to $25,945.00 received by the appellant in the year 1931 as interest on account of money loaned without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate without the State of Vermont, bearing interest at a rate of not exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate or a bond for a deed, but imposed no tax on income received as interest on account of such a loan within the State of Vermont, or on account of such a credit with respect to real estate within the State of Vermont, bearing such interest and evidenced by such obligations,

Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

2b. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at a rate of 4% on income amounting to $25,945.00 received by the appellant in the year 1931 as interest on account of money loaned without the State of Vermont or on account of credits representing the purchase pricei n whole or in part of real estate without the State of Vermont, bearing interest at a rate of not exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate or a bond for a deed, but imposed no tax on income received as interest on account of such a [fol. 57] loan within the State of Vermont, or on account of such a credit with respect to real estate within the State of Vermont, bearing such interest and evidenced by such obligations,

Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in violation of Article IV, Section 2, of the Constitution of the United States.

2c. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at a rate of 4% on income amounting to $25,945.00 received by the appellant in the year 1931 as interest on account of money loaned without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate without the State of Vermont, bearing interest at a rate of not exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate or a bond for a deed, but imposed no tax on income received as interest on account of such a loan within the State of Vermont, or on account of such a credit with respect to real estate within the State of Vermont, bearing such interest and evidenced by such obligations,

Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

2d. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts [fol. 58] of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at a rate of 4% on income amounting to $25,945.00 received by the appellant in the year 1931

as interest on account of money loaned without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate without the State of Vermont, bearing interest at a rate of not exceeding 5% per annum; and evidenced by a promissory note, mortgage on real estate or a bond for a deed, but imposed no tax on income received as interest on account of such a loan within the State of Vermont, or on account of such a credit with respect to real estate within the State of Vermont, bearing such interest and evidenced by such obligations.

Did not deny said appellant the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

2e. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at a rate of 4% on income amounting to $25,945.00 received by the appellant in the year 1931 as interest on account of money loaned without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate without the State of Vermont, bearing interest at a rate of not exceeding 5% per annum, and evidenced by a promissory note, [fol. 59] mortgage on real estate or a bond for a deed, but imposed no tax on income received as interest on account of such a loan within the State of Vermont, or on account of such a credit with respect to real estate within the State of Vermont, bearing such interest and evidenced by such obligations,

Did not interfere with interstate or foreign commerce in violation of Section 8 of Article I of the Constitution of the United States.

3a. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at a rate of 4% on income amounting to $21,927.77 received by the appellant in the year 1931 as interest on account of money loaned either within or without the State of Vermont, or on account of credits rep-

resenting the purchase price in whole or in part of real estate either within or without the State of Vermont, bearing interest at a rate exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate, or a bond for a deed, but imposed no tax on income received as interest on account of money loaned within the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate within the State of Vermont, bearing interest at a rate not exceeding 5% per annum and evidenced by such obligations,

Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

[fol. 60] 3b. The Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $21,927.77 received by the appellant in the year 1931 as interest on account of money loaned either within or without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate either within or without the State of Vermont, bearing interest at a rate exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate, or a bond for a deed, but imposed no tax on income received as interest on account of money loaned within the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate within the State of Vermont, bearing interest at a rate not exceeding 5% per annum and evidenced by such obligations.

Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in violation of Article IV, Section 2, of the Constitution of the United States.

3c. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $21,927.77 received by the appellant in the year

1931 as interest on account of money loaned either within [fol. 61] or without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate either within or without the State of Vermont, bearing interest at a rate exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate, or a bond for a deed, but imposed no tax on income received as interest on account of money loaned within the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate within the State of Vermont, bearing interest at a rate not exceeding 5% per annum and evidenced by such obligations,

Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

3d. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $21,927.77 received by the appellant in the year 1931 as interest on account of money loaned either within or without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate either within or without the State of Vermont, bearing interest at a rate exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate, or a bond for a deed, but imposed no tax on income received as interest on account of money loaned within the State of [fol. 62] Vermont, or on account of credits representing the purchase price in whole or in part of real estate within the State of Vermont, bearing interest at a rate not exceeding 5% per annum and evidenced by such obligations,

Did not deny said appellant the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

3e. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $21,927.77 received by the appellant in the year 1931

as interest on account of money loaned either within or without the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate either within or without the State of Vermont, bearing interest at a rate exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate, or a bond for a deed, but imposed no tax on income received as interest on account of money loaned within the State of Vermont, or on account of credits representing the purchase price in whole or in part of real estate within the State of Vermont, bearing interest at a rate not exceeding 5% per annum and evidenced by such obligations,

Did not interfere with interestate or foreign commerce in violation of Section 8 of Article I of the Constitution of the United States.

4a. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and [fol. 63] Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on $800 of income derived by the appellant from his ownership of and interest in stocks, bonds, notes and other interest bearing securities, but which, by Section 3 of said Public Act No. 17, would have eliminated said $800 of income from taxation, as a personal exemption of a married individual living with his wife, if he had not received any income other than that derived from said sources,

Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

4b. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on $800 of income derived by the appellant from his ownership of and interest in stocks, bonds, notes and other interest bearing securities, but which, by Section 3 of said Public Act No. 17 would have eliminated said $800 of income from taxation, as a personal exemption of a married individual living with his wife, if he had not received any income other than that derived from said sources,

Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in violation of Article IV, Section 2, of the Constitution of the United States.

[fol. 64] 4c. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on $800 of income derived by the appellant from his ownership of and interest in stocks, bonds, notes and other interest bearing securities, but which, by Section 3 of said Public Act No. 17 would have eliminated said $800 of income from taxation, as a personal exemption of a married individual living with his wife, if he had not received any income other than that derived from said sources,

Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

4d. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on $800 of income derived by the appellant from his ownership of and interest in stocks, bonds, notes and other interest bearing securities, but which, by Section 3 of said Public Act No. 17 would have eliminated said $800 of income from taxation, as a personal exemption of a married individual living with his wife, if he had not received any income other than that derived from said sources.

Did not deny said appellant the equal protection of the laws in violation of the Fourteenth Amendment of the [fols. 65 & 66] Constitution of the United States.

Dated: January 31st, 1935.

Jas. C. Colgate, Appellant. George L. Hunt and E. J. Dimock, Attorneys for the Appellant.

[fols. 67 & 68] Citation in usual form omitted in printing.

[fols. 69-72] Supersedeas Bond on Appeal for 250.00 approved Feb. 6, 1935. Omitted in printing.

[fol. 73] IN SUPREME COURT OF VERMONT.

[Title omitted]

OFFICER'S RETURN OF SERVICE

STATE OF VERMONT,
Washington County, ss.

At Montpelier, in said county, on this 5th day of February, A. D. 1935, I made service of the foregoing citation on the appellee Erwin M. Harvey, Tax Commissioner of the State of Vermont, by delivering to him a true and attested copy of said citation together with a true copy of the following papers in the above entitled cause, on file with Joseph G. Frattini, Esq., Clerk of the Supreme Court of said State of Vermont, namely: (1) Petition for allowance of appeal; (2) Order allowing appeal; (3) Assignments of error; (4) Statement under Rule 12 of the United States Supreme Court; (5) Notice of appeal and notice required by Rule 12; with my return hereon thereon endorsed.

And on the same day, to wit, the 5th day of February, A. D. 1935, I made service of said citation on Lawrence C. Jones, Attorney General of said State of Vermont and attorney for said Erwin M. Harvey, by delivering to him, at said Montpelier, a true and attested copy of said citation together with a true copy of the following papers in the above entitled cause, on file with Joseph G. Frattini, Esq., Clerk of the Supreme Court of said State of Vermont, namely: (1) Petition for allowance of appeal; (2) Order [fols. 74 & 75] allowing appeal; (3) Assignments of error; (4) Statement under Rule 12 of the United States Supreme Court; (5) Notice of appeal and notice required by Rule 12; with my return hereon thereon endorsed.

Attest: H. C. Lawson, Sheriff of Washington County, State of Vermont.

Fees:

2 copies, $3.00
2 miles, .30

$3.30

[fol. 76] IN SUPREME COURT OF VERMONT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Honorable Supreme Court of the State of Vermont:

You are hereby directed in the preparation of the transcript of the record on the appeal of James C. Colgate, Appellant, to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Vermont, entered in the above entitled suit at a General Term of said Supreme Court of the State of Vermont, begun and held at Montpelier on the first Tuesday of November, A. D. 1934, to incorporate the following proceedings, documents and portions of the record in said transcript, namely:

1. Your docket entries.

2. The Case in the Supreme Court of Vermont, including
   (a) The Index.
   (b) The Plaintiff's Bill of Exceptions.
   (c) The Petition, together with Exhibits A, B, C, D and E and the recognizance and summons annexed thereto.
   (d) The Agreed Statement of Facts.
   (e) The Judgment Order of the Washington County Court in Vacation, dated February 15, 1934.
[fol. 77] (f) The Plaintiff's Exceptions to said Judgment of the Washington County Court.

3. The Final Judgment of the Supreme Court of the State of Vermont entered at the General Term of said Court, begun and held at Montpelier on the first Tuesday of November, A. D. 1934 affirming the judgment of the Washington County Court.

4. The Opinion of the Supreme Court of the State of Vermont.

5. Appellant's Petition for Allowance of Appeal to the Supreme Court of the United States.

6. Order allowing such Appeal.

7. Appellant's Assignments of Error.

8. Appellant's Statement Under Rule 12 of the Rules of the Supreme Court of the United States.

9. Citation on Appeal.

10. Bond on Appeal.

11. Appellant's Notice of Appeal and Notice Required by Rule 12 of the Rules of the Supreme Court of the United States.

12. The Sheriff's Return of Service of the Citation on Appeal, Petition for Allowance of Appeal, Order Allowing Appeal, Assignments of Error, Statement under Rule 12 of the Rules of the United States Supreme Court and Notice of Appeal and Notice Required by Rule 12.

13. Appellee's statement, if any, disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States.

14. Appellee's motion to dismiss or affirm, if any.

15. This Præcipe.

[fol. 78] Dated: Montpelier, Vermont, February 18, 1935.

E. J. Dimock, and George L. Hunt, Attorneys for Appellant.

[fols. 79 & 80] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 81] IN SUPREME COURT OF THE UNITED STATES

AFFIDAVIT OF SERVICE OF STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed March 21, 1935

UNITED STATES OF AMERICA,
State of New York, County of New York, ss:

Cornelius O. Donahue, being duly sworn, deposes and says:

I reside at 77 Rutland Road, Borough of Brooklyn, City and State of New York. I am over the age of 21 years and am not a party to the above entitled cause. I am an attorney at law admitted to practice in all courts of the State of New York and am associated with E. J. Dimock, counsel for the Appellant in the above entitled cause.

On the 20th day of March, 1935, I served the annexed Statement of Points to be Relied upon and Designation of the Parts of the Record to be Printed upon Erwin M. Harvey, Tax Commissioner, Appellee, and upon Lawrence C. Jones, Attorney General of the State of Vermont, and counsel for the Appellee herein, as follows:

1. By depositing a true copy thereof in the United States mail in a Post Office Box regularly maintained by the Government of the United States at 49 Wall Street, Borough of Manhattan, City and State of New York, properly en- [fol. 82] closed in a securely closed wrapper, with the postage thereon prepaid, addressed to said Erwin M. Harvey, Tax Commissioner, at his office in the State House, Montpelier, Vermont.

2. By depositing a true copy thereof in the United States mail in a Post Office Box regularly maintained by the Government of the United States at 49 Wall Street, Borough of Manhattan, City and State of New York, properly enclosed in a securely closed wrapper, with the postage thereon prepaid, addressed to said Lawrence C. Jones, Attorney General of the State of Vermont, at his office in the State House, Montpelier, Vermont.

Cornelius O. Donahue.

Subscribed and sworn to before me this 20th day of March, 1935. J. Herrick Schoonmaker. Notary Public, Ulster County, Certificate filed in New York County. Clerk's No. 1552, Register's No. 6S950. Commission expires March 30, 1936.

[fol. 83] SUPREME COURT OF THE UNITED STATES

STATEMENTS OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed March 21, 1935

Now comes the appellant in the above entitled cause and states that the points upon which he intends to rely in this Court in this case are as follows:

1. The Supreme Court of the State of Vermont erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $130,875.39 received by the appellant in the year 1931 as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts not subject to taxation as against such corporations at the rate of 2% under Part II of said Public Act No. 17 because earned without the State of Vermont, but imposed no tax upon the amounts received as dividends or parts thereof on stocks of corporations the income of which was in whole or in such parts subject to taxation as against such corporations at the rate of 2% under Part II of said Act because earned [fol. 84] within the State of Vermont:

A. Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

B. Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in violation of Article IV, Section 2, of the Constitution of the United States.

C. Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

D. Did not deny said appellant the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

E. Did not interfere with interstate or foreign commerce in violation of Section 8 of Article I of the Constitution of the United States.

2. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on income amounting to $25,945.00 received by the appellant in the year 1931 as interest on account of money loaned without the State [fol. 85] of Vermont, or on account of credits representing

the purchase price in whole or in part of real estate without the State of Vermont, bearing interest at a rate of not exceeding 5% per annum, and evidenced by a promissory note, mortgage on real estate or a bond for a deed, but imposed no tax on income received as interest on account of such a loan within the State of Vermont, or on account of such a credit with respect to real estate within the State of Vermont, bearing such interest and evidenced by such obligations,

A. Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

B. Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in violation of Article IV, Section 2, of the Constitution of the United States.

C. Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

D. Did not deny said appellant the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

E. Did not interfere with interstate or foreign commerce in violation of Section 8 of Article I of the Constitution of the United States.

[fol. 86] 3. The said Court erred in ruling that

The provisions of Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the Income and Franchise Tax Act of 1931,

Which imposed a tax at the rate of 4% on $800. of income derived by the appellant from his ownership of and interest in stocks, bonds, notes and other interest bearing securities, but which, by Section 3 of said Public Act No. 17, would have eliminated said $800. of income from taxation, as a personal exemption of a married individual living with his wife, if he had not received any income other than that derived from said sources,

A. Did not abridge said appellant's privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment of the Constitution of the United States.

B. Did not abridge said appellant's privileges and immunities as a citizen and resident of the State of Vermont in violation of Article IV, Section 2, of the Constitution of the United States.

C. Did not deprive said appellant of his property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

D. Did not deny said appellant the equal protection of the laws in violation of Fourteenth Amendment of the Constitution of the United States.

[fol. 87] And the appellant further states that only the following parts of the record as filed in this Court need to be printed by the Clerk for the hearing of the case.

1. The docket entries of the Clerk of the Supreme Court of the State of Vermont.

2. The case in the Supreme Court of the State of Vermont, including

(a) The Plaintiff's Bill of Exceptions
(b) The Petition, together with Exhibits A, B, C, D and E, and the recognizance and summons annexed thereto
(c) The Agreed Statement of Facts
(d) The Judgment Order of the Washington County Court in Vacation, dated February 15, 1934
(e) The Plaintiff's Exceptions to said judgment of the Washington County Court.

3. The Final Judgment of the Supreme Court of the State of Vermont entered at the General Term of said Court, begun and held at Montpelier on the first Tuesday of November, A. D. 1934 affirming the judgment of the Washington County Court.

4. The Opinion of the Supreme Court of the State of Vermont.

5. Appellant's Petition for allowance of Appeal to the Supreme Court of the United States.

6. Order Allowing such Appeal.

7. Appellant's Assignments of Error.

8. Citation on Appeal.

9. Appellant's Notice of Appeal and Notice Required by Rule 12 of the Rules of the Supreme Court of the United States.

[fols. 88 & 89] 10. The Sheriff's Return of Service of the Citation on Appeal, Petition for Allowance of Appeal, Order Allowing Appeal, Assignments of Error, Statement under Rule 12 of the Rules of the United States Supreme Court and Notice of Appeal and Notice Required by Rule 12.

11. The Appellant's Præcipe.

12. This Statement of Points to be Relied upon and Designation of the Parts of the Record to be Printed.

Dated: March 19, 1935.

E. J. Dimock, Counsel for Appellant.

[fol. 90] [File endorsement omitted.]

Endorsed on cover: File No. 39,418. Vermont, Supreme Court. Term No. 790. James C. Colgate, Appellant, vs. Erwin M. Harvey, Tax Commissioner of the State of Vermont. Filed March 18, 1935. File No. 790 O. T. 1934.

FILE COPY

Office Supreme Court
FILED
MAR 18 1
CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. [redacted] 8

JAMES C. COLGATE,

Appellant,

vs.

ERWIN M. HARVEY, TAX COMMISSIONER OF THE STATE OF VERMONT.

APPEAL FROM THE SUPREME COURT OF THE STATE OF VERMONT.

STATEMENT AS TO JURISDICTION.

GEORGE L. HUNT,
E. J. DIMOCK,
Counsel for Appellant.

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IN THE SUPREME COURT OF THE STATE OF VERMONT

JAMES C. COLGATE,

Appellant,

against

ERWIN M. HARVEY, Tax Commissioner,

Appellee.

STATEMENT UNDER RULE 12 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

I. Basis of Jurisdiction of the Supreme Court of the United States.

The basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question is that said appeal is from a final judgment of the Supreme Court of the State of Vermont, which is the highest court of said State in which a decision in this suit can be had. There is drawn in question in this suit the validity of a statute of the State of Vermont on the ground of its being repugnant to the Constitution of the United States and the said final judgment is a decision in favor of the validity of the said statute.

II. Statutory Provisions Sustaining Jurisdiction.

The statutory provisions which sustain the jurisdiction of the Supreme Court of the United States are Section 237, sub-division (a) of the Judicial Code of the United States, as amended, by Chapter 14 of the Act of January 31, 1928

(45 Stat. 54), as amended by Chapter 440 of the Act of April 26, 1928 (45 Stat. 466).

III. Statute of State of Vermont, the Validity of Which Is Involved.

The statute of the State of Vermont, the validity of which is involved, is Public Act No. 17 of the Public Acts of 1931 of the State of Vermont, known as the "Income and Franchise Tax Act of 1931." Said statute may be found at pages 17 to 46 inclusive, in the official edition of "Acts and Resolves Passed by the General Assembly of the State of Vermont at the Thirty-First Biennial Session." The pertinent provisions of the said statute are here set out verbatim as follows:

Part I.

"Sec. 3. *Rate; Exemptions; Amount.*—A tax is hereby imposed upon every resident of the state, which tax shall be levied, collected and paid annually, with respect to

"First, his net income as herein defined, after deducting the exemptions provided in this act, at the rate of two per cent; and

"Second, to the income received by him on account of the ownership or use of or interest in any stock, bond, note, agreement or other interest bearing security at the rate of four per cent; provided, however, that the words 'income received by him on account of the ownership or use of or interest in any stock, bond, note, agreement or other interest bearing security' shall not include the following items, which shall be exempt from taxation under this act:

"(a) Interest received on account of money loaned within this state, at a rate of interest not exceeding five per cent per annum evidenced by a promissory note, mortgage on real estate or a bond for a deed, including credits representing the purchase price, or any part thereof, of real estate within this state, sold or

transferred, evidenced by a promissory note, mortgage or bond for a deed bearing a rate of interest not exceeding five per cent per annum;

* * * * * * *

"(d) Dividends on stocks of those corporations which are subject to taxation under Part II of this act; provided, however, that if a corporate franchise tax is not measured by the entire net income of such corporation, then a portion of the dividends paid by such corporation shall be taxable under Part I of this act, and such taxable portion shall be that proportion of the dividend as the income earned by the corporation from business done without the state of Vermont bears to the entire income of the corporation.

"Such taxes shall first be levied, collected and paid in the year 1932 and with respect to the net income received during the calendar year 1931 or during any income year ending during the twelve months ending March 31, 1932.

"(e) In case the income taxed in this section is derived wholly from ownership of or interest in any stock, bond, note or other interest bearing security, there shall be deducted from such income the following exemptions:

"First: In case of a single individual a personal exemption of $400.

"Second: In the case of the head of a family, or a married individual living with husband or wife, a personal exemption of $800; but if either a husband or wife shall receive any income other than that derived from the ownership of or interest in any stock, bond, note or other interest bearing security, then such personal exemption shall not be allowed. A husband and wife living together shall receive but one personal exemption of $800 against their aggregate net income; and in case they make separate returns, the personal exemption of $800 may be taken by either or divided between them." (pp. 18 and 19.)